



PATENT

THE UNITED STATES PATENT AND TRADEMARK OFFICE

#6

In re Application of:

Kurganov et al.

Atty Docket: 47242-
00028USPT

Serial No.: 09/777,406

Group Art: 2661

Filed: February 6, 2001

Examiner: Unknown

Title: PERSONAL VOICE-BASED
INFORMATION RETRIEVAL SYSTEM

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**PETITION UNDER 37 C.F.R. § 1.183
TO GRANT CORRECTED FILING DATE**

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EXPRESS MAIL RECEIPT

EXPRESS MAIL NO.: EL 722103479 US
DATE OF DEPOSIT: October 9, 2001

I hereby certify that this paper or fee is being deposited with the United States Postal Service "EXPRESS MAIL POST OFFICE TO ADDRESSEE" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to: Assistant Commissioner for Patents, Attn: Box dac, Washington D.C. 20231.

Date

Signature

Dear Commissioner:

This petition requests correction of the filing date of the above referenced application. The correct filing date for this application is February 5, 2001, however, the Patent Office has assigned a filing date of February 6, 2001. A copy of the Express Mailing Receipt for this application is not available, therefore, Applicant provides the following evidence as proof that it is entitled to the February 5th filing date.

On February 5, 2001, Applicant's filed three patent applications via Express Mail with the U.S. Patent Office:

- 1) 09/777,406 ("the '406 application") (Attorney Docket No. 47242-00028USPT),
- 2) 09/777,025 ("the '025 application") (Attorney Docket No. 47242-00025USPT), and
- 3) 09/776,996 ("the '996 application") (Attorney Docket No. 47242-00027USPT).

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The '025 application and the '996 application were both accorded the correct filing date of February 5, 2001. Declaration of Russell J. Genet¹, ¶ 7. However, the '406 application was initially given a filing date of February 6, 2001. Genet Declaration, ¶ 7.

On May 15, 2001, Applicant requested a corrected filing receipt to correct the filing date from February 6th to February 5th. Genet Declaration, ¶ 8. On May 29th, Applicant received a "Corrected Filing Receipt" changing the filing date to February 5th. Genet Declaration, ¶ 9. On June 5, 2001, an "Updated Filing Receipt" was received in which the filing date had been changed back to February 6, 2001. Genet Declaration, ¶ 10. On June 12, 2001, Applicant submitted another request to the Patent Office requesting the filing date be changed back to February 5th as had been done with the "Corrected Filing Receipt" which was received on May 29th. Genet Declaration, ¶ 11.

By August, Applicant had not received a response from the Patent Office. So, on August 9, 2001, Applicant telephoned the Office of Initial Examination and spoke with a Ms. Evans. Genet Declaration, ¶ 12. Ms. Evans indicated the Patent Office would not change the filing date unless Applicants could produce a copy of the Express Mail Receipt. It was not until after this conversation that Applicant realized that the Express Mail Receipt for the '406 application was missing. Genet Declaration, ¶ 12.

Applicant then began a long series of inquiries with employees of Post Offices in both Chicago and Washington D.C. in an attempt to obtain a copy of the Express Mail Receipt for the '406 application. Genet Declaration, ¶ 13; Declaration of James M. Sklena², ¶¶ 2-9. Unfortunately, none of the Post Offices contacted were able to find such documentation. Genet Declaration, ¶ 13; Sklena Declaration, ¶¶ 4, 8, 9.

The only postal record obtained by Applicant is a "Shipment History" form printed from the U.S. Post Office's web site. Exh. C. This record indicates the Express Mail package containing the '406 application (Express Mail Label No. EK506616987US) was "accepted" on February 6, 2001 at 3:43 p.m. at the Post Office for zip code 60607, which is the "Chicago Central Facility" located at 433 W. Harrison St., Chicago, Illinois. Exh. D. This entry appears to be erroneous for a number of reasons.

¹ Attached as Exh. A.

² Attached as Exh. B.

First, Applicant filed two additional patent applications on the very same day – the ‘025 application and the ‘996 application. As discussed, both of these applications were given the correct filing date of February 5, 2001. Genet Declaration, ¶ 7. The “Shipment Histories” from the Post Office’s web site for the ‘025 application and the ‘996 application indicates that these applications were deposited on February 5th at 5:52 p.m. and 5:54 p.m., respectively³. Exh. E. Further, these “Shipment Histories” indicate that these two applications were “accepted” at the Post Office in zip code 60604, which is known as the “Loop Station” and is located at 211 S. Clark St, Chicago, Illinois. See Exh. D. The Loop Station Post Office is only about six blocks from the offices of Jenkins & Gilchrist. Declaration of Damien Hughes⁴, ¶ 3. Further, this is the Post Office location where the Office Services employees of Jenkins & Gilchrist routinely deposit Express Mail packages. Hughes Declaration, ¶ 3. Express Mail packages are taken to the Chicago Central Facility Post Office, which is located nearly two miles away from Jenkins & Gilchrist’s Offices, on very rare occasions and only for filings after 6:00 p.m. Hughes Declaration, ¶ 4.

Therefore, the “Shipment History” for the ‘406 application makes no sense because: 1) it indicates a deposit at the Chicago Central Facility on Harrison Street – where Express Mail packages are rarely delivered, 2) it indicates a deposit at 3:43 p.m. at the Chicago Central Facility – a time at which the Office Services employees do not go to the Post Office, let alone the Chicago Central Facility, and 3) it is inconsistent with the “Shipping History” of two other Express Mail packages which were completed and filed at the same time as the ‘406 application. Therefore, it appears that the February 6th date shown in the Post Office’s “Shipping History” does not accurately reflect when the Express Mail package for the ‘406 application was first received by the U.S. Post Office.

Furthermore, all of the documentation related to the ‘406 application indicate it was filed on February 5, 2001. The cover page of the specification contains a “Certificate of Mailing”, signed by Damien Hughes, certifying that the application was deposited on February 5, 2001

³ The ‘025 application was filed with Express Mail number EL705450368US and the ‘996 application was filed with Express Mail number EK506616995US. See Genet Declaration, Exhs. 3 & 4.

⁴ Attached as Exh. F.

having Express Mail No. EK506616987US. Hughes Declaration, ¶ 5, Exh. 1. Further, the “Patent Application Transmittal Letter” also contained a “Certificate of Mailing” indicating a deposit date of February 5, 2001. Hughes Declaration, ¶ 5, Exh. 2. Additionally, the check enclosed with the ‘406 application (Attorney Docket No. 47242-00028USPT) for paying the filing fee was dated February 5, 2001. Exh. G.

The history of when the ‘406 application was last edited also indicates it was completed on February 5, 2001. The document management number of the ‘406 application is 152851. Genet Declaration, ¶ 2. This number is generated by iManage, which is a document management software program used by Applicant’s attorneys. The history of this document indicates it was opened and printed by Applicant’s attorney, Russell J. Genet, on February 5, 2001 at 4:50 p.m. Genet Declaration, ¶ 2, Exh. 2. It was not accessed again until February 14, 2001. Genet Declaration, Exh. 2. This is consistent with statements that the ‘406 application was completed and given to clerks in the Offices Services Department on February 5, 2001. Genet Declaration, ¶¶ 2, 6. Furthermore, this history is consistent with the iManage document histories of the ‘025 application and the ‘996 application, which were accorded a February 5, 2001 filing date. Genet Declaration, ¶ 7. The ‘025 application had document number 153059 and was opened and printed on February 5, 2001 at 5:04 p.m. (Genet Declaration, ¶ 4) and the ‘996 application had document number 155909 and was opened and printed on February 5, 2001 at 4:48 p.m. (Genet Declaration, ¶ 5).

All of the evidence outlined above demonstrates that the ‘406 application was filed on February 5, 2001. Therefore, Applicant request that the filing date be corrected.

Applicant also notes failing to accord a filing date of February 5th would be prejudicial to Applicant. This application seeks priority from a provisional application (serial no. 60/180,343) which expired on February 5, 2001. Therefore, by not affording Applicant the filing date of February 5th, Applicant will be precluded from obtaining priority from the provisional application. Grant of this earlier filing date would not be prejudicial to other parties because provisionals are not publicly available. Further, Applicant is only asking that the filing date be changed by one day. *Sturzinger v. Comm’r of Patents*, 377 F. Supp. 1284, 1286 (D. D.C. 1974) (granting earlier filing date where all circumstances manifest an intent to file on or before a critical date, others will


suffer no prejudice by award of the earlier date, the date sought is a critical date, and the applicant made every effort to comply with the rules of the Patent Office.)

Applicant therefore requests that this Petition be granted and a filing date of February 5, 2001 be assigned to this application.

In accordance with 37 C.F.R. § 1.17(h), enclosed is Check No. 38161 in the amount of \$130.00 for the Petition fee. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Jenkins & Gilchrist Account No. 10-0447/47242-00028. A duplicate copy of this Petition is enclosed for that purpose.

Respectfully submitted,

10/9/2001
Date


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